

Senate Engrossed House Bill

**FILED**

**KEN BENNETT  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
First Regular Session  
2009

CHAPTER 36

## **HOUSE BILL 2118**

AN ACT

AMENDING SECTIONS 38-615, 38-711, 38-715, 38-730, 38-743 AND 38-744, ARIZONA REVISED STATUTES; AMENDING SECTION 38-745, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 244, SECTION 1; REPEALING SECTION 38-745, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 244, SECTION 2; AMENDING TITLE 38, CHAPTER 5, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 38-748; AMENDING SECTIONS 38-749, 38-757, 38-762, 38-766, 38-766.01, 38-783 AND 38-797, ARIZONA REVISED STATUTES; REPEALING SECTION 38-797.06, ARIZONA REVISED STATUTES; AMENDING TITLE 38, CHAPTER 5, ARTICLE 2.1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 38-797.06; AMENDING SECTION 38-797.07, ARIZONA REVISED STATUTES; REPEALING LAWS 2007, CHAPTER 244, SECTION 4; RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-615, Arizona Revised Statutes, is amended to  
3 read:

4 38-615. Payment for accumulated sick leave; requirements;  
5 limit; definition

6 A. An officer or employee of the THIS state, subject to legislative  
7 appropriation, or an officer or employee of a county, subject to  
8 authorization by the board of supervisors, is eligible, on retirement, to  
9 receive benefits as follows:

10 1. An officer or employee who has at least five hundred but less than  
11 seven hundred fifty hours of sick leave ~~shall~~ IS ENTITLED TO receive payments  
12 equal to twenty-five per cent of the officer's or employee's salary at the  
13 officer's or employee's current hourly rate for each hour of accumulated sick  
14 leave.

15 2. An officer or employee who has at least seven hundred fifty but  
16 less than one thousand hours of sick leave ~~shall~~ IS ENTITLED TO receive  
17 payments equal to thirty-three per cent of the officer's or employee's salary  
18 at the officer's or employee's current hourly rate for each hour of  
19 accumulated sick leave.

20 3. An officer or employee who has at least one thousand hours of sick  
21 leave ~~shall~~ IS ENTITLED TO receive payments equal to fifty per cent of the  
22 officer's or employee's salary at the officer's or employee's current hourly  
23 rate for each hour of accumulated sick leave not to exceed one thousand five  
24 hundred hours of accumulated sick leave.

25 ~~B. An officer or employee who receives payments as provided in~~  
26 ~~subsection A of this section shall not receive more than thirty thousand~~  
27 ~~dollars. If an officer or employee receives payments pursuant to subsection~~  
28 ~~A of this section, the officer or employee shall be paid the amount due the~~  
29 ~~officer or employee in installments over a three year period.~~

30 B. IN ORDER TO BE ELIGIBLE TO RECEIVE PAYMENTS PURSUANT TO  
31 SUBSECTION A OF THIS SECTION:

32 1. AN OFFICER OR EMPLOYEE MUST ESTABLISH A RETIREMENT DATE NOT LATER  
33 THAN THIRTY-ONE DAYS AFTER TERMINATION OF EMPLOYMENT BY QUALIFYING WITH AN  
34 AUTHORIZED RETIREMENT SYSTEM OR PLAN OF THIS STATE.

35 2. THE RETIREMENT DATE MUST BE EFFECTIVE NOT LATER THAN THIRTY-ONE  
36 DAYS AFTER TERMINATION OF EMPLOYMENT.

37 3. AN OFFICER OR EMPLOYEE SHALL ELECT RETIREMENT BENEFITS THAT ARE  
38 DEFINED NOT LATER THAN THIRTY-ONE DAYS AFTER TERMINATION OF EMPLOYMENT.

39 C. AN OFFICER OR EMPLOYEE WHO RECEIVES PAYMENTS AS PROVIDED IN  
40 SUBSECTION A OF THIS SECTION SHALL NOT RECEIVE MORE THAN THIRTY THOUSAND  
41 DOLLARS.

42 D. IF AN OFFICER OR EMPLOYEE RECEIVES PAYMENTS PURSUANT TO  
43 SUBSECTION A OF THIS SECTION, THE OFFICER OR EMPLOYEE SHALL BE PAID THE  
44 AMOUNT DUE THE OFFICER OR EMPLOYEE EITHER IN A LUMP SUM OR IN INSTALLMENTS  
45 OVER A THREE YEAR PERIOD.

1       ~~E.~~ E. If an officer or employee dies before the officer or employee  
2 receives the total payment due to the officer or employee or if an officer or  
3 employee is eligible for normal retirement but has not retired at the time of  
4 the officer's or employee's death, the officer's or employee's beneficiary  
5 ~~shall~~ IS ENTITLED TO receive the balance due to the officer or employee in a  
6 lump sum.

7       ~~D.~~ F. Notwithstanding any other law:

8       1. The cash value of the sick leave credit pursuant to subsection A of  
9 this section shall not be used to compute the average salary.

10       2. The payment authorized by this section for accumulated sick leave  
11 is not salary or compensation for the purposes of making retirement  
12 contributions or computing any pension benefit.

13       3. THE SICK LEAVE MUST BE AVAILABLE FOR USE BY THE OFFICER OR EMPLOYEE  
14 AT THE TIME OF TERMINATION OF EMPLOYMENT. THIS SECTION DOES NOT APPLY TO  
15 PREVIOUSLY FORFEITED SICK LEAVE.

16       ~~E.~~ G. ~~The provisions of This section apply~~ APPLIES to an officer or  
17 employee of the THIS state or a county who is eligible to participate in the  
18 Arizona state retirement system as provided in chapter 5, article 2 of this  
19 title, in the public safety personnel retirement system as provided in  
20 chapter 5, article 4 of this title, in the corrections officer retirement  
21 plan as provided in chapter 5, article 6 of this title or in an optional  
22 retirement program established by the Arizona board of regents pursuant to  
23 section 15-1628.

24       ~~F.~~ H. This section applies retroactively to July 1, 1998 to an  
25 officer or employee of a university under the jurisdiction of the Arizona  
26 board of regents who participates in a federal retirement system, except that  
27 this section does not apply to a participant in a federal retirement system  
28 if the participant receives any sick leave payment from the federal  
29 government.

30       ~~G.~~ I. ~~The provisions of This section shall apply~~ APPLIES only to  
31 officers or employees of the THIS state or a county whose compensation  
32 regulations provide for a forfeiture of sick leave on retirement.

33       ~~H.~~ J. For the purposes of this section, "hourly rate" means an  
34 officer's or employee's hourly salary on retirement, excluding overtime pay  
35 and pay for unused annual leave.

36       Sec. 2. Section 38-711, Arizona Revised Statutes, is amended to read:  
37       38-711. Definitions

38       In this article, unless the context otherwise requires:

39       1. "Active member" means a member as defined in paragraph 23,  
40 subdivision (b) of this section who satisfies the eligibility criteria  
41 prescribed in section 38-727 and who is currently making member contributions  
42 as prescribed in section 38-736.

43       2. "Actuarial equivalent" means equality in value of the aggregate  
44 amounts expected to be received under two different forms of payment, based

1 on mortality and interest rate assumptions approved from time to time by the  
2 board.

3 3. "ASRS" means the Arizona state retirement system established by  
4 this article.

5 4. "Assets" means the resources of ASRS including all cash,  
6 investments or securities.

7 5. "Average monthly compensation" means:

8 (a) For a member whose membership in ASRS commenced before January 1,  
9 1984 and who left the member's contributions on deposit or reinstated  
10 forfeited credited service pursuant to section 38-742 for a period of  
11 employment that commenced before January 1, 1984, the monthly average of  
12 compensation on which contributions were remitted during a period of sixty  
13 consecutive months during which the member receives the highest compensation  
14 within the last one hundred twenty months of credited service. Any month for  
15 which no contributions are reported to ASRS or that falls within a period of  
16 nonpaid or partially paid leave of absence or sabbatical leave shall be  
17 excluded from the computation. The sixty consecutive months may entirely  
18 precede, may be both before and after or may be completely after any excluded  
19 months. If the member was employed for less than sixty consecutive months,  
20 the average monthly compensation is based on the total consecutive months  
21 worked. Payments for accumulated vacation or annual leave, sick leave,  
22 compensatory time or other forms of termination pay which, before August 12,  
23 2005, constitute compensation for members whose membership in ASRS commenced  
24 before January 1, 1984, do not cease to be included as compensation if paid  
25 in the form of nonelective employer contributions under a 26 United States  
26 Code section 403(b) plan if all payments of employer and employee  
27 contributions are made at the time of termination. Contributions shall be  
28 made to ASRS on these amounts pursuant to sections 38-735, 38-736 and 38-737.

29 (b) Effective July 1, 1985, the monthly average of compensation on  
30 which contributions were remitted during a period of thirty-six consecutive  
31 months during which a member receives the highest compensation within the  
32 last one hundred twenty months of credited service. Any month for which no  
33 contributions are reported to ASRS or that falls within a period of nonpaid  
34 or partially paid leave of absence or sabbatical leave shall be excluded from  
35 the computation. The thirty-six consecutive months may entirely precede, may  
36 be both before and after or may be completely after any excluded months. If  
37 the member was employed for less than thirty-six consecutive months, the  
38 average monthly compensation shall be based on the total consecutive months  
39 worked. This subdivision applies only to members whose membership in ASRS  
40 was effective after December 31, 1983 or who agree in writing as a binding  
41 condition of eligibility for being granted the benefit advantages available  
42 under this subdivision to have their benefit computed on the basis of the  
43 definition of compensation.

44 6. "Board" means the ASRS board established in section 38-713.

1           7. "Compensation" means the gross amount paid to a member by an  
2 employer as salary or wages, including amounts that are subject to deferred  
3 compensation or tax shelter agreements, for services rendered to or for an  
4 employer, or that would have been paid to the member except for the member's  
5 election or a legal requirement that all or part of the gross amount be used  
6 for other purposes, but does not include amounts paid in excess of  
7 compensation limits established in section 38-746. Compensation includes  
8 amounts paid as salary or wages to a member by a second employer IF THE  
9 MEMBER MEETS THE REQUIREMENTS PRESCRIBED IN PARAGRAPH 23, SUBDIVISION (b) OF  
10 THIS SECTION WITH THAT SECOND EMPLOYER. Compensation, as provided in  
11 paragraph 5, subdivision (b) of this section, does not include:

12           (a) Lump sum payments, on termination of employment, for accumulated  
13 vacation or annual leave, sick leave, compensatory time or any other form of  
14 termination pay whether the payments are made in one payment or by  
15 installments over a period of time.

16           (b) Damages, costs, attorney fees, interest or other penalties paid  
17 pursuant to a court order or a compromise settlement or agreement to satisfy  
18 a grievance or claim even though the amount of the payment is based in whole  
19 or in part on previous salary or wage levels, except that, if the court order  
20 or compromise settlement or agreement directs salary or wages to be paid for  
21 a specific period of time, the payment is compensation for that specific  
22 period of time. If the amount directed to be paid is less than the actual  
23 salary or wages that would have been paid for the period if service had been  
24 performed, the contributions for the period shall be based on the amount of  
25 compensation that would have been paid if the service had been performed.

26           (c) Payment, at the member's option, in lieu of fringe benefits that  
27 are normally paid for or provided by the employer.

28           (d) Merit awards pursuant to section 38-613 and performance bonuses  
29 paid to assistant attorneys general pursuant to section 41-192.

30           (e) AMOUNTS THAT ARE PAID AS SALARY OR WAGES TO A MEMBER FOR WHICH  
31 EMPLOYER CONTRIBUTIONS HAVE NOT BEEN PAID.

32           8. "Contingent annuitant" means the person named by a member to  
33 receive retirement income payable following a member's death after retirement  
34 as provided in section 38-760.

35           9. "Credited service" means, subject to section 38-739, the number of  
36 years standing to the member's credit on the books of ASRS during which the  
37 member made the required contributions.

38           10. "Current annual compensation" means the greater of:

39           (a) Annualized compensation of the typical pay period amount  
40 immediately before the date of a request to ASRS to purchase credited service  
41 pursuant to section 38-743, 38-744 or 38-745. The typical pay period amount  
42 shall be determined by taking the five pay periods immediately before the  
43 date of a request, disregarding the highest and lowest compensation amount  
44 pay periods and averaging the three remaining pay periods.

1 (b) Annualized compensation of the partial year, disregarding the  
2 first compensation amount pay period, if the member has less than twelve  
3 months total credited service on the date of a request to purchase credited  
4 service pursuant to section 38-743, 38-744 or 38-745.

5 (c) The sum of the twelve months of compensation immediately before  
6 the date of a request to ASRS to purchase credited service pursuant to  
7 section 38-743, 38-744 or 38-745.

8 (d) The sum of the thirty-six months of compensation immediately  
9 before the date of a request to ASRS to purchase credited service pursuant to  
10 section 38-743, 38-744 or 38-745 divided by three.

11 (e) If the member has retired one or more times from ASRS, the average  
12 monthly compensation that was used for calculating the member's last pension  
13 benefit times twelve.

14 11. "Early retirement" means retirement before a member's normal  
15 retirement date after five years of total credited service and attainment of  
16 age fifty.

17 12. "Effective date" means July 1, 1970, except with respect to  
18 employers and members whose contributions to ASRS commence thereafter, the  
19 effective date of their membership in ASRS is as specified in the applicable  
20 joinder agreement.

21 13. "Employer" means:

22 (a) This state.

23 (b) Participating political subdivisions.

24 (c) Participating political subdivision entities.

25 14. "Employer contributions" means all amounts paid into ASRS by an  
26 employer on behalf of a member.

27 15. "Fiscal year" means the period from July 1 of any year to June 30  
28 of the following year.

29 16. "Inactive member" means a member who previously made contributions  
30 to ASRS and who satisfies each of the following:

31 (a) Has not retired.

32 (b) Is not eligible for active membership in ASRS.

33 (c) Is not currently making contributions to ASRS.

34 (d) Has not withdrawn contributions from ASRS.

35 17. "Interest" means the assumed actuarial investment earnings rate  
36 approved by the board.

37 18. "Internal revenue code" means the United States internal revenue  
38 code of 1986, as amended.

39 19. "Investment management" means the persons, companies, banks,  
40 insurance company investment funds, mutual fund companies, management or any  
41 combinations of those entities that are appointed by ASRS and that have  
42 responsibility and authority for investment of the monies of ASRS.

43 20. "Late retirement" means retirement after normal retirement.

1       21. "Leave of absence" means any unpaid leave authorized by the  
2 employer, including leaves authorized for sickness or disability or to pursue  
3 education or training.

4       22. "Life annuity" means equal monthly installments payable during the  
5 member's lifetime after retirement.

6       23. "Member":

7       (a) Means any employee of an employer on the effective date.

8       (b) Means all employees of an employer who are eligible for membership  
9 pursuant to section 38-727 and who are engaged to work at least twenty weeks  
10 in each fiscal year and at least twenty hours each week.

11       (c) Means any person receiving a benefit under ASRS.

12       (d) Means any person who is a former active member of ASRS and who has  
13 not withdrawn contributions from ASRS pursuant to section 38-740.

14       (e) Does not include any employee of an employer who is otherwise  
15 eligible pursuant to this article and who begins service in a limited  
16 appointment for not more than eighteen months on or after July 1, 1979. If  
17 the employment exceeds eighteen months, the employee shall be covered by ASRS  
18 as of the beginning of the nineteenth month of employment. In order to be  
19 excluded under this subdivision, classifications of employees designated by  
20 employers as limited appointments must be approved by the director.

21       (f) Does not include any leased employee. For the purposes of section  
22 414(n) of the internal revenue code, "leased employee" means an individual  
23 who:

24       (i) Is not otherwise an employee of an employer.

25       (ii) Pursuant to a leasing agreement between the employer and another  
26 person, performs services for the employer on a substantially full-time basis  
27 for at least one year.

28       (iii) Performs services under the primary direction or control of the  
29 employer.

30       24. "Member contributions" means all amounts paid to ASRS by a member.

31       25. "Normal costs" means the sum of the individual normal costs for all  
32 active members for each fiscal year. The normal cost for an individual  
33 active member is the cost that is assigned to the fiscal year using the  
34 projected unit credit method.

35       26. "Normal retirement age" means the age at which a member reaches the  
36 member's normal retirement date.

37       27. "Normal retirement date" means the earliest of the following:

38       (a) A member's sixty-fifth birthday.

39       (b) A member's sixty-second birthday and completion of at least ten  
40 years of credited service.

41       (c) The first day that the sum of a member's age and years of total  
42 credited service equals eighty.

43       28. "Political subdivision" means any political subdivision of this  
44 state and includes a political subdivision entity.

1           29. "Political subdivision entity" means an entity:

2           (a) That is located in this state.

3           (b) That is created in whole or in part by political subdivisions,  
4 including instrumentalities of political subdivisions.

5           (c) Where a majority of the membership of the entity is composed of  
6 political subdivisions.

7           (d) Whose primary purpose is the performance of a government related  
8 service.

9           30. "Retired member" means a member who is receiving retirement  
10 benefits pursuant to this article.

11           31. "Service year" means fiscal year, except that:

12           (a) If the normal work year required of a member is less than the full  
13 fiscal year but is for a period of at least nine months, the service year is  
14 the normal work year.

15           (b) For a salaried member employed on a contract basis under one  
16 contract, or two or more consecutive contracts, for a total period of at  
17 least nine months, the service year is the total period of the contract or  
18 consecutive contracts.

19           (c) In determining average monthly compensation pursuant to paragraph  
20 5 of this section, the service year is considered to be twelve months of  
21 compensation.

22           32. "State" means this state, including any department, office, board,  
23 commission, agency, institution or other instrumentality of this state.

24           33. "Vested" means that a member is eligible to receive a future  
25 retirement benefit.

26           Sec. 3. Section 38-715, Arizona Revised Statutes, is amended to read:

27           38-715. Director; powers and duties

28           A. The board shall appoint a director. The term of the director is  
29 one year and expires on June 30. On expiration of a director's term, the  
30 board may reappoint the director for another term. The board may remove the  
31 director at any time for cause.

32           B. The director shall appoint a deputy director and assistant  
33 directors with the approval of the board.

34           C. The director, under the supervision of the board, shall:

35           1. Administer this article, except the investment powers and duties of  
36 investment management.

37           2. Hire employees and services the director deems necessary and  
38 prescribe their duties.

39           3. Prescribe procedures to be followed by members and their  
40 beneficiaries in filing applications for benefits.

41           4. Be responsible for:

42           (a) Income and the collection of income and the accuracy of all  
43 expenditures.

44           (b) Maintaining books and maintaining and processing records of ASRS.



1 (c) The investment of temporary surplus monies only in obligations of  
2 the United States government or agencies whose obligations are guaranteed by  
3 the United States government, commercial paper or banker's acceptances for a  
4 term of not more than fifteen days.

5 (d) Providing continuing education programs for the board to keep the  
6 board members informed of current issues and information needed to carry out  
7 their duties.

8 5. Perform additional powers and duties as may be prescribed by the  
9 board and delegated to the director.

10 D. The director, under the supervision and approval of the board, may:

11 1. Delegate duties and responsibilities to such state departments as  
12 the director deems feasible and desirable to administer this article.

13 2. Appoint a custodian for the safekeeping of all investments owned by  
14 ASRS and register stocks, bonds and other investments in the name of a  
15 nominee.

16 3. Invest marketable securities owned by ASRS by entering into  
17 security loan agreements with one or more security lending entities. For the  
18 purpose of this paragraph:

19 (a) "Marketable securities" means securities that are freely and  
20 regularly traded on recognized exchanges or marketplaces.

21 (b) "Security loan agreement" means a written contract under which  
22 ASRS, as lender, agrees to lend specific marketable securities for a period  
23 of not more than one year. ASRS, under a security loan agreement, shall  
24 retain the right to collect from the borrower all dividends, interest,  
25 premiums and rights and any other distributions to which ASRS otherwise would  
26 have been entitled. During the term of a security loan agreement ASRS shall  
27 waive the right to vote the securities that are the subject of the agreement.  
28 A security loan agreement shall provide for termination by either party on  
29 terms mutually acceptable to the parties. The borrower shall deliver  
30 collateral to ASRS or its designated representative. At all times during the  
31 term of any security loan agreement the collateral shall be in an amount  
32 equal to at least one hundred per cent of the market value of the loaned  
33 securities. A security loan agreement shall provide for payment of  
34 additional collateral on a daily basis, or at such other less frequent  
35 intervals as the value of the loaned securities increases. A security loan  
36 agreement with a security lending entity shall contain the terms and  
37 conditions of the fees to be paid to a security lending entity for servicing  
38 the security loan agreement. ASRS shall pay the fees approved by the board  
39 to the security lending entity for servicing a security loan agreement from  
40 the revenues of the security lending program.

41 4. Establish one or more reserve holding accounts, into which the  
42 board shall close periodically the account balances of inactive accounts. If  
43 any person files a claim and furnishes proof of ownership of any amounts in  
44 any inactive account the claim shall be paid from the reserve holding account  
45 on the same basis as if no action had been taken under this paragraph.

1 Interest and supplemental credits shall be allocated to each reserve holding  
2 account on June 30 of each year, as determined by the board. For the  
3 purposes of this paragraph, "inactive account" means an account to which  
4 contributions have not been paid for six months or more.

5 5. Make retirement under this article effective retroactively to on or  
6 after the day following the date employment is terminated if the member was  
7 unable to apply before the retroactive effective date through no fault of the  
8 member.

9 E. The director, under supervision of the governing committee for tax  
10 deferred annuity and deferred compensation plans, may hire and supervise  
11 employees and obtain services the director deems necessary to administer  
12 article 5 of this chapter. The tax deferred annuity and deferred  
13 compensation programs established pursuant to article 5 of this chapter shall  
14 bear the costs for these employees and services.

15 F. The director and all persons employed by the director ~~shall be~~  
16 ~~compensated as determined pursuant~~ ARE NOT SUBJECT to section 38-611 OR TITLE  
17 41, CHAPTER 4, ARTICLE 5 OR 6.

18 Sec. 4. Section 38-730, Arizona Revised Statutes, is amended to read:

19 38-730. Charter city or ASRS retirement service credits;  
20 transfers

21 A. On application the retirement service credits of an employee of a  
22 charter city that is not an employer under ASRS or an employee of an employer  
23 that is an employer under ASRS whose job functions are shifted by law from  
24 one employer jurisdiction to another shall be transferred to the retirement  
25 system of the new employer.

26 B. An employee of a charter city that is not an employer under ASRS or  
27 an employee of an employer that is an employer under ASRS who becomes  
28 employed by the other employer jurisdiction may apply to have the employee's  
29 retirement service credits transferred to the retirement system of the new  
30 employer. The retirement service credits of an employee of a charter city  
31 that is not an employer under ASRS shall not be transferred unless the  
32 governing body of that city approves the transfer. The retirement service  
33 credits of an employee of an employer that is an employer under ASRS shall  
34 not be transferred unless the board approves the transfer.

35 C. The retirement system that transfers the retirement service credits  
36 shall pay to the retirement system of the new employer an amount equal to the  
37 present value, as of the date of the transfer, of all benefits generated by  
38 the transferred service credits in the retirement system of the new employer  
39 as determined by the governing board of the retirement system of the new  
40 employer. The amount of any payment under this subsection shall include the  
41 accumulated retirement contributions of the employee whose retirement service  
42 credits are transferred.

43 D. The accumulated retirement contributions of an employee whose  
44 retirement service credits are transferred that are paid to the retirement

1 system of the new employer shall not be withdrawn by the employee unless the  
2 employee's employment terminates.

3 E. THE RETIREMENT SYSTEM TO WHICH THE EMPLOYEE IS TRANSFERRING SHALL  
4 NOT APPLY SERVICE CREDITS TO THE EMPLOYEE'S ACCOUNT UNTIL SUCH TIME AS  
5 COMPLETE PAYMENT IS MADE TO THE RETIREMENT SYSTEM TO WHICH THE EMPLOYEE IS  
6 TRANSFERRING. ON COMPLETION OF THE TRANSFER PROVIDED FOR IN THIS SECTION,  
7 THE EMPLOYEE'S RIGHTS IN THE RETIREMENT SYSTEM FROM WHICH THE EMPLOYEE IS  
8 TRANSFERRING ARE EXTINGUISHED.

9 Sec. 5. Section 38-743, Arizona Revised Statutes, is amended to read:

10 38-743. Public service credit

11 A. If an active member of ASRS or a member who is receiving benefits  
12 pursuant to section 38-797.07 was previously employed by the United States  
13 government, a state, TERRITORY, COMMONWEALTH, OVERSEAS POSSESSION OR INSULAR  
14 AREA of the United States or a political subdivision of a state, TERRITORY,  
15 COMMONWEALTH, OVERSEAS POSSESSION OR INSULAR AREA of the United States,  
16 excluding any time worked for a prison while the member was incarcerated, the  
17 member may receive credited service for this prior employment if the member  
18 pays into ASRS the amount prescribed in subsection B of this section.

19 B. A member who elects to receive credit for service with the United  
20 States government, a state, TERRITORY, COMMONWEALTH, OVERSEAS POSSESSION OR  
21 INSULAR AREA of the United States or a political subdivision of a state,  
22 TERRITORY, COMMONWEALTH, OVERSEAS POSSESSION OR INSULAR AREA of the United  
23 States shall pay to ASRS an amount equal to the present value of the  
24 additional benefit that is derived from the purchased credited service using  
25 the actuarial assumptions that are approved by the board.

26 C. A member who previously was a member of another public employee  
27 retirement system and who receives or is eligible to receive retirement  
28 benefits from that system for any period of employment is ineligible to  
29 receive retirement benefits from ASRS for the same period.

30 D. BEGINNING JULY 1, 2010, A MEMBER SHALL HAVE AT LEAST FIVE YEARS OF  
31 CREDITED SERVICE IN ASRS BEFORE ELECTING TO RECEIVE CREDIT FOR SERVICE  
32 PURSUANT TO THIS SECTION.

33 Sec. 6. Section 38-744, Arizona Revised Statutes, is amended to read:

34 38-744. Leave of absence; credit for leave without pay

35 A. If an active member of ASRS or a member who is receiving benefits  
36 pursuant to section 38-797.07 is officially granted a leave of absence from  
37 employment without pay and returns to employment with the same employer,  
38 unless employment could not be resumed because of disability or  
39 nonavailability of a position, the member may elect to be credited with  
40 service for retirement purposes for not more than one year of the leave by  
41 paying to ASRS the amounts as provided in subsection B of this section, if  
42 the member has not withdrawn contributions from ASRS and the member's  
43 employer has certified that the leave of absence benefits or is in the best  
44 interests of the employer.

1 B. A member who elects to be credited with a leave period as provided  
2 in subsection A of this section shall pay to ASRS an amount equal to the  
3 present value of the additional benefit that is derived from the purchased  
4 credited service using the actuarial assumptions that are approved by the  
5 board.

6 C. BEGINNING JULY 1, 2010, A MEMBER SHALL HAVE AT LEAST FIVE YEARS OF  
7 CREDITED SERVICE IN ASRS BEFORE ELECTING TO RECEIVE CREDIT FOR SERVICE  
8 PURSUANT TO THIS SECTION.

9 ~~E.~~ D. For the purposes of subsection A of this section, each employer  
10 shall adopt rules establishing guidelines for a leave of absence that  
11 benefits or is in the best interests of the employer.

12 Sec. 7. Section 38-745, Arizona Revised Statutes, as amended by Laws  
13 2007, chapter 244, section 1, is amended to read:

14 38-745. Credit for military service

15 A. An active member of ASRS or a member who is receiving benefits  
16 pursuant to section 38-797.07 may purchase credited service in ASRS for  
17 active military service if ~~both~~ ALL of the following apply:

18 1. The member was honorably separated from the military service.

19 2. The member submits a copy of the member's military service record  
20 (DD-214) or its equivalent with the member's application for military service  
21 credit.

22 3. BEGINNING JULY 1, 2010, A MEMBER HAS AT LEAST FIVE YEARS OF  
23 CREDITED SERVICE IN ASRS.

24 B. The cost to purchase military service credit is an amount equal to  
25 the present value of the additional benefit that is derived from the  
26 purchased credited service using the actuarial assumptions that are approved  
27 by the board.

28 C. An active member of ASRS who is called to active military service  
29 may receive credited service for not more than sixty months of active  
30 military service, except as provided by the uniformed services employment and  
31 reemployment rights act (38 United States Code section 4312(c)). The  
32 member's employer shall make employer contributions and member contributions  
33 for the member if the member meets the following requirements:

34 1. Was an active member of ASRS on the day before the member began  
35 active military service.

36 2. Is a member of the Arizona national guard or is a member of the  
37 reserves of any military establishment of the United States.

38 3. Volunteers or is ordered into active military service of the United  
39 States as part of a military call-up.

40 4. One of the following occurs:

41 (a) Is honorably separated from active military service and returns to  
42 employment for the same employer from which the member left for active  
43 military service within ninety days after the date active military service is  
44 terminated.

1 (b) Is hospitalized as a result of military service and returns to  
2 employment for the same employer from which the member left for active  
3 military service within ninety days after release from service related  
4 hospitalization.

5 (c) Becomes disabled as a result of or during the military service and  
6 is unable to return to the same employer.

7 (d) Dies as a result of or during the military service.

8 D. Contributions made pursuant to subsection C of this section shall  
9 be for the period of time beginning on the date the member began active  
10 military service and ending on the later of one of the following dates:

11 1. The date the member is separated from active military service.

12 2. The date the member is released from service related  
13 hospitalization or one year after initiation of service related  
14 hospitalization, whichever date is earlier.

15 3. One year after the date of disability.

16 4. The date the member dies as a result of or during active military  
17 service.

18 E. Notwithstanding any other law, on payment of the contributions made  
19 pursuant to subsection C of this section, the member shall be credited with  
20 service for retirement purposes for the period of time of active military  
21 service of not more than sixty months.

22 F. The employer shall make contributions pursuant to subsection C of  
23 this section as follows:

24 1. Contributions shall be based on the compensation that a member  
25 would have received but for the period that the member was ordered into  
26 active military service.

27 2. If the employer cannot reasonably determine a member's rate of  
28 compensation for the period that the member was ordered into active military  
29 service, the employer shall make contributions based on the member's average  
30 rate of compensation during the twelve-month period immediately preceding the  
31 period of active military service.

32 3. If a member has been employed less than twelve months before being  
33 ordered into active military service, the employer shall make contributions  
34 based on the employment period immediately preceding the period of active  
35 military service.

36 4. Employer contributions shall be made in a lump sum and without  
37 penalty when the member returns to employment, when it is determined that the  
38 member is unable to return to employment because of a disability as a result  
39 of or that occurred during military service or on receipt of the member's  
40 death certificate. If a member suffers a service related death, the employer  
41 shall make the employer and member contributions up to and including the date  
42 of the member's death. Death benefits shall be calculated as prescribed by  
43 law.

1 G. In computing the length of total credited service of a member for  
2 the purpose of determining retirement benefits or eligibility, the period of  
3 military service, as prescribed by this section, shall be included.

4 H. Notwithstanding any other law, the member is not required to  
5 reimburse the member's employer or ASRS for any contribution made pursuant to  
6 subsection C of this section.

7 I. In addition to, but not in duplication of, the provisions of  
8 subsection C of this section, contributions, benefits and credited service  
9 provided pursuant to this section shall be provided in accordance with  
10 section 414(u) of the internal revenue code.

11 Sec. 8. Repeal

12 Section 38-745, Arizona Revised Statutes, as amended by Laws 2007,  
13 chapter 244, section 2, is repealed.

14 Sec. 9. Title 38, chapter 5, article 2, Arizona Revised Statutes, is  
15 amended by adding section 38-748, to read:

16 38-748. Employer payment for ineligible persons: definitions

17 A. IF AN EMPLOYER PAYS CONTRIBUTIONS ON BEHALF OF ANY PERSON WHO IS  
18 NOT ELIGIBLE BY STATUTE FOR ASRS MEMBERSHIP AND EITHER ASRS OR A COURT  
19 DETERMINES THAT ASRS IS LEGALLY OBLIGATED TO PROVIDE THAT PERSON WITH ANY  
20 BENEFIT OR CREDIT UNDER THIS ARTICLE OR ARTICLE 2.1 OF THIS CHAPTER, THE  
21 EMPLOYER SHALL PAY TO ASRS ANY UNFUNDED LIABILITY RESULTING FROM THE  
22 PROVISION OF BENEFITS OR CREDIT TO THE PERSON.

23 B. IF THE EMPLOYER DOES NOT REMIT FULL PAYMENT OF THE UNFUNDED  
24 LIABILITY PURSUANT TO SUBSECTION A OF THIS SECTION WITHIN NINETY DAYS AFTER  
25 BEING NOTIFIED BY ASRS OF THE AMOUNT DUE, THE UNPAID AMOUNT ACCRUES INTEREST  
26 UNTIL THE AMOUNT IS PAID IN FULL.

27 C. CREDITED SERVICE CEASES TO ACCRUE AS OF THE DATE THAT ASRS OR A  
28 COURT FIRST DETERMINES THAT ASRS IS LEGALLY OBLIGATED TO PROVIDE ANY BENEFIT  
29 OR CREDIT TO THE PERSON.

30 D. IF THE AMOUNT IN THE PERSON'S ASRS ACCOUNT IS GREATER THAN THE  
31 PRESENT VALUE OF THE BENEFIT OR CREDIT, ASRS SHALL RETAIN THE ENTIRE ACCOUNT  
32 AND SHALL NOT BE REQUIRED TO REFUND, CREDIT OR OFFSET ANY EXCESS AGAINST  
33 FUTURE CONTRIBUTIONS.

34 E. THIS SECTION APPLIES TO AN EMPLOYER THAT EMPLOYS, EITHER DIRECTLY  
35 OR INDIRECTLY, A PERSON WHO PERFORMS SERVICES FOR A THIRD-PARTY ORGANIZATION  
36 AND THAT DOES NOT HAVE A WRITTEN REPRESENTATION BY ASRS OF THE PERSON'S  
37 ELIGIBILITY.

38 F. FOR THE PURPOSES OF THIS SECTION:

39 1. "AMOUNT IN THE PERSON'S ASRS ACCOUNT" MEANS TWO TIMES THE PERSON'S  
40 RETIREMENT CONTRIBUTIONS MADE PURSUANT TO SECTION 38-736:

41 (a) PLUS:

42 (i) INTEREST ON THE PERSON'S RETIREMENT CONTRIBUTIONS MADE PURSUANT TO  
43 SECTION 38-736.

44 (ii) ANY CONTRIBUTIONS MADE FOR THE PURCHASE OF SERVICE CREDITS  
45 PURSUANT TO SECTION 38-742, 38-743, 38-744 OR 38-745.

(iii) INTEREST ON THE AMOUNT CONTRIBUTED FOR THE PURCHASE OF SERVICE CREDITS PURSUANT TO SECTION 38-742, 38-743, 38-744 OR 38-745.

(b) MINUS ANY AMOUNTS PAID BY ASRS PURSUANT TO THIS ARTICLE OR ARTICLE 2.1 OF THIS CHAPTER.

2. "INTEREST" MEANS THE INTEREST RATE ASSUMPTION THAT IS APPROVED BY ASRS FOR ACTUARIAL EQUIVALENCY.

3. "UNFUNDED LIABILITY" MEANS THE AMOUNT, IF ANY, THAT THE PRESENT VALUE OF THE PERSON'S BENEFIT OR CREDIT, USING THE ACTUARIAL ASSUMPTIONS APPROVED BY ASRS, EXCEEDS THE AMOUNT IN THE PERSON'S ASRS ACCOUNT CALCULATED AS OF THE DATE THAT ASRS OR A COURT FIRST DETERMINES THAT ASRS IS LEGALLY OBLIGATED TO PROVIDE ANY BENEFIT OR CREDIT TO THE PERSON.

Sec. 10. Section 38-749, Arizona Revised Statutes, is amended to read:

38-749. Employer termination incentive program: employer payment of actuarial cost: definition

A. If a termination incentive program that is offered by an employer results in an actuarial unfunded liability to ASRS, the employer shall pay to ASRS the amount of the unfunded liability. ASRS shall determine the amount of the unfunded liability in consultation with its actuary.

B. An employer shall notify ASRS if the employer plans to implement a termination incentive program that may affect ASRS funding.

C. If ASRS determines that an employer has implemented a termination incentive program that results in an actuarial unfunded liability to ASRS, ASRS shall assess the cost of the unfunded liability to that employer. If the employer does not remit full payment of all monies due within ninety days after being notified by ASRS of the amount due, the unpaid amount accrues interest until the amount is paid in full. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

D. For the purposes of this section, "termination incentive program":

1. Means a total increase in compensation of thirty per cent or more that is given to a member in any one or more years ~~of the last three years~~ before termination THAT ARE USED TO CALCULATE THE MEMBER'S AVERAGE MONTHLY COMPENSATION if that increase in compensation is used to calculate the member's retirement benefit and that increase in compensation is not attributed to a—

~~(a) promotion.~~

~~(b) Reclassification of the position.~~

~~(c) Merit or a cost of living increase.~~

2. Means ANYTHING OF VALUE, INCLUDING any monies, credited service or points that the employer provides to OR ON BEHALF OF a member ~~in exchange for~~ a THAT IS CONDITIONED ON THE member's ~~written agreement to terminate on or before a date certain~~ TERMINATION EXCEPT FOR—

~~3. Does not include payments to an employee for—~~

~~(a) Compensation for accrued vacation.~~

~~(b) Compensation for accrued, sick leave.~~

1       ~~(e)~~ OR compensatory time UNLESS THE PAYMENT IS ENHANCED BEYOND THE  
2 EMPLOYER'S CUSTOMARY PAYMENT.

3       Sec. 11. Section 38-757, Arizona Revised Statutes, is amended to read:  
4       38-757. Normal retirement

5       A. After application on a form prescribed by the director, a member  
6 may retire on reaching the member's normal retirement date.

7       B. Except as provided in section 38-768 ~~and subsection C of this~~  
8 ~~section~~, a member who meets the requirements for retirement benefits at  
9 normal retirement shall receive a monthly life annuity that equals the result  
10 of paragraph 1 multiplied by paragraph 2 when those paragraphs are defined as  
11 follows:

12       1. The number of whole and fractional years of credited service times  
13 the following:

14       (a) 2.10 per cent if the member does not have more than 19.99 years of  
15 credited service.

16       (b) 2.15 per cent if the member has at least 20.00 years of credited  
17 service but not more than 24.99 years of credited service.

18       (c) 2.20 per cent if the member has at least 25.00 years of credited  
19 service but not more than 29.99 years of credited service.

20       (d) 2.30 per cent if the member has at least 30.00 years of credited  
21 service.

22       2. The member's average monthly compensation.

23       ~~C. For a person who becomes a member on or after the effective date of~~  
24 ~~this amendment to this section, the amount of a member's monthly life annuity~~  
25 ~~computed pursuant to subsection B of this section shall not be more than~~  
26 ~~eighty per cent of the member's average monthly compensation. This~~  
27 ~~limitation does not preclude benefit increases pursuant to section 38-767.~~

28       ~~D.~~ C. Employers shall provide evidence of, and certify to, in a  
29 manner provided by the board, the member's average monthly compensation if  
30 that information is not already available from the records of ASRS.

31       Sec. 12. Section 38-762, Arizona Revised Statutes, is amended to read:  
32       38-762. Survivor benefits before retirement; definition

33       A. On the ~~termination of employment by~~ death of any active or inactive  
34 member before retirement, the designated beneficiary of the member shall be  
35 paid a survivor benefit equal to the sum of both of the following:

36       1. Two times the member's contribution and interest to the defined  
37 benefit plan established by this article for credited service that a member  
38 earned by working for an employer, plus all contributions and interest made  
39 for the purchase of military service, leave without pay or other public  
40 service credit.

41       2. The amount of the member's employee account and the member's  
42 employer account together with supplemental credits, if any, transferred from  
43 the defined contribution program administered by ASRS to the defined benefit  
44 program established by this article.



1           B. Subsection A, paragraphs 1 and 2 of this section shall be  
2 accumulated at compound interest at a rate determined by the board through  
3 the day of the payment of the benefit.

4           C. In lieu of a single payment, a designated beneficiary who is  
5 eligible for a survivor benefit pursuant to subsection A of this section of  
6 more than five thousand dollars may elect to receive the actuarial equivalent  
7 of the survivor benefit pursuant to one of the following options:

8           1. A monthly income for five, ten or fifteen years certain and for  
9 life thereafter.

10          2. Another form of optional benefits approved by the board.

11          D. On the death of an active or inactive member who has reached an  
12 early retirement date applicable to the member or who has a minimum of  
13 fifteen years of credited service and whose designated beneficiary is a  
14 spouse, child under the age of twenty-one or handicapped child age twenty-one  
15 or older, including a legally adopted child or a stepchild, ASRS shall pay  
16 the designated beneficiary a survivor benefit equal to the present value, on  
17 the date following the date of the member's death, of the life annuity that  
18 would have been payable to the designated beneficiary if the member had  
19 retired on the date of the member's death and elected to receive an annuity  
20 in the form of a joint and survivor annuity providing the same amount of  
21 annuity to the surviving beneficiary as the reduced amount that would have  
22 been payable during the lifetime of the member. If there is more than one  
23 designated beneficiary under this subsection, ASRS shall determine the amount  
24 of the annuity and its present value as if the oldest of the beneficiaries  
25 was the sole beneficiary. Payment under this subsection shall be in lieu of,  
26 but not less than, any payment under subsection A of this section. Payment  
27 under this subsection, at the election of the designated beneficiary, may be  
28 made in a single sum or may be made in accordance with subsection C of this  
29 section. A beneficiary may not elect this option unless a benefit of  
30 twenty-five dollars or more per month is payable to the designated  
31 beneficiary or the designated beneficiary's estate.

32          E. If a member dies before distribution of the member's benefits  
33 commences, the member's entire benefits shall be distributed within the  
34 required distribution provisions of section 401(a)(9) of the internal revenue  
35 code and the regulations that are issued under that section by the United  
36 States secretary of the treasury as prescribed in section 38-775.

37          F. If a deceased member did not designate a beneficiary or the  
38 beneficiary named by a member predeceases the member, ASRS shall pay the  
39 member's survivor benefit to the following persons in the following order of  
40 priority:

41           1. The member's surviving spouse.

42           2. The member's surviving children, including adopted children, in  
43 equal shares.

44           3. The member's surviving parents in equal shares.

45           4. The member's estate.

1 G. Any payment pursuant to this section is payment for the account of  
2 the member or the member's beneficiary and all persons entitled to payment  
3 and, to the extent of the payment, is a full and complete discharge of all  
4 liability of the board or ASRS, or both, under or in connection with ASRS.

5 H. For the purposes of this section, "designated beneficiary" means  
6 any individual designated by the member as the member's beneficiary.

7 Sec. 13. Section 38-766, Arizona Revised Statutes, is amended to read:

8 38-766. Retired members; return to work; suspension of  
9 benefits; exceptions; maximum benefit

10 A. A retired member who is engaged to work by an employer for at least  
11 twenty weeks in each fiscal year and at least twenty hours per week resumes  
12 active membership in ASRS. ASRS shall suspend payment of the member's  
13 retirement benefits until the member either:

14 1. Terminates employment AND FILES AN APPLICATION FOR RERETIREMENT ON  
15 A FORM THAT IS APPROVED BY THE DIRECTOR.

16 2. Attains a normal retirement date, and no longer meets the  
17 requirements for active membership pursuant to this subsection AND FILES AN  
18 APPLICATION FOR RERETIREMENT ON A FORM THAT IS APPROVED BY THE DIRECTOR.

19 B. A member who satisfies subsection A, paragraph 1 or 2 of this  
20 section is entitled to receive an annuity recomputed to include the  
21 additional compensation and credited service. However, the recomputed  
22 annuity shall be in the original optional form chosen pursuant to section  
23 38-760, with the same beneficiary, if applicable, as when the member first  
24 retired, UNLESS THE MEMBER HAS RESUMED ACTIVE MEMBERSHIP FOR AT LEAST SIXTY  
25 CONSECUTIVE MONTHS. A member who retired under a provision of law allowing  
26 increased benefits if the retirement occurred during a specific period of  
27 time and who subsequently becomes an employee under ASRS shall not retain the  
28 increased benefits under the prior law when benefits are computed for the  
29 member's most recent retirement.

30 C. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, ASRS SHALL NOT  
31 SUSPEND THE PAYMENT OF RETIREMENT BENEFITS IF A RETIRED MEMBER BEGINS OR  
32 RETURNS TO EMPLOYMENT WITH AN EMPLOYER IN A POSITION THAT SATISFIES ALL OF  
33 THE FOLLOWING:

34 1. RESULTS IN A TRUE CHANGE IN POSITION, JOB DUTIES AND JOB TITLE FROM  
35 THE POSITION OCCUPIED BY THE MEMBER BEFORE ASRS RETIREMENT.

36 2. EITHER:

37 (a) REQUIRES PARTICIPATION IN ANOTHER STATE RETIREMENT SYSTEM, PLAN OR  
38 PROGRAM AND THE RETIRED MEMBER MAKES CONTRIBUTIONS OR WAIVES PARTICIPATION  
39 PURSUANT TO SECTION 38-804, SUBSECTION A.

40 (b) PERMITS A MEMBER TO ELECT TO PARTICIPATE IN ANOTHER STATE  
41 RETIREMENT SYSTEM, PLAN OR PROGRAM AND THE MEMBER MAKES SUCH AN ELECTION.

42 3. DOES NOT REQUIRE MEMBERSHIP IN THE DEFINED BENEFIT PLAN ESTABLISHED  
43 BY THIS ARTICLE.

1 D. A RETIRED MEMBER WHO RETURNS TO WORK PURSUANT TO SUBSECTION C OF  
2 THIS SECTION DOES NOT ACCRUE CREDITED SERVICE, MEMBER SERVICE AS PROVIDED IN  
3 SECTION 15-1628, SUBSECTION B, PARAGRAPH 4, ADDITIONAL ACCOUNT BALANCES,  
4 RETIREMENT BENEFITS OR LONG-TERM DISABILITY PROGRAM BENEFITS PURSUANT TO  
5 ARTICLE 2.1 OF THIS CHAPTER FOR THE PERIOD THE RETIRED MEMBER RETURNS TO  
6 WORK. THE PERIOD THE RETIRED MEMBER RETURNS TO WORK IS NOT ELIGIBLE FOR  
7 PURCHASE UNDER SECTION 38-743 OR 38-744.

8 ~~E.~~ E. Section 38-769, subsection L applies when determining the  
9 maximum benefit that may be paid to a retired member who resumes active  
10 membership and subsequently retires.

11 Sec. 14. Section 38-766.01, Arizona Revised Statutes, is amended to  
12 read:

13 38-766.01. Retired members; return to work; employer  
14 contribution payments; definitions

15 A. Notwithstanding section 38-766, AT A RETIRED MEMBER'S ELECTION, a  
16 retired member may return to work and still be eligible to receive retirement  
17 benefits if all of the following requirements are satisfied:

18 1. The retired member has attained the member's normal retirement age.  
19 2. The retired member terminated employment at least twelve months  
20 before returning to work.

21 ~~3. If the retired member returns to work as a teacher, the retired~~  
22 ~~member is working as a certificated teacher.~~

23 ~~4.~~ 3. If the retired member returns to work as a teacher, the retired  
24 member's employment is not subject to the requirements prescribed in sections  
25 15-538, 15-538.01 and 15-539 through 15-543.

26 ~~5. The retired member acknowledges in writing the provisions of this~~  
27 ~~section.~~

28 B. A RETIRED MEMBER'S ELECTION TO RETURN TO WORK UNDER THIS SECTION IS  
29 IRREVOCABLE FOR THE REMAINDER OF THE RETIRED MEMBER'S EMPLOYMENT FOR WHICH  
30 THE RETIREE MADE THE ELECTION.

31 C. THE RETIRED MEMBER SHALL ACKNOWLEDGE THIS SECTION IN WRITING AND  
32 FILE THE ACKNOWLEDGEMENT WITH THE EMPLOYER WITHIN THIRTY DAYS OF RETURNING TO  
33 WORK.

34 ~~B.~~ D. An employer of a retired member who returns to work pursuant to  
35 this section shall not pay contributions on behalf of the retired member  
36 pursuant to section 38-736, 38-737 or 38-797.05.

37 E. A retired member who returns to work pursuant to this section does  
38 not accrue credited service, MEMBER SERVICE AS PROVIDED IN SECTION 15-1628,  
39 SUBSECTION B, PARAGRAPH 4, ADDITIONAL ACCOUNT BALANCES, retirement benefits  
40 or long-term disability program benefits pursuant to article 2.1 of this  
41 chapter for the period the retired member returns to work. THE PERIOD THE  
42 RETIRED MEMBER RETURNS TO WORK IS NOT ELIGIBLE FOR PURCHASE UNDER SECTION  
43 38-743 OR 38-744.

1           Sec. 15. Section 38-783, Arizona Revised Statutes, is amended to read:

2           38-783. Retired members; dependents; health insurance; premium  
3                 payment; separate account; definitions

4           A. Subject to subsections ~~J, K and L~~ G, H AND I of this section, the  
5 board shall pay from ASRS assets part of the single coverage premium of any  
6 health and accident insurance for each retired, contingent annuitant or  
7 disabled member of ASRS if the member elects to participate in the coverage  
8 provided by ASRS or section 38-651.01 or elects to participate in a health  
9 and accident insurance program provided or administered by an employer or  
10 paid for, in whole or in part, by an employer to an insurer. A contingent  
11 annuitant must be receiving a monthly retirement benefit from ASRS in order  
12 to obtain any premium payment provided by this section. The board shall pay:

13           1. Up to one hundred fifty dollars per month for a member of ASRS who  
14 is not eligible for medicare if the retired or disabled member has ten or  
15 more years of credited service.

16           2. Up to one hundred dollars per month for each member of ASRS who is  
17 eligible for medicare if the retired or disabled member has ten or more years  
18 of credited service.

19           B. Subject to subsections ~~J, K and L~~ G, H AND I of this section, the  
20 board shall pay from ASRS assets part of the family coverage premium of any  
21 health and accident insurance for a retired, contingent annuitant or disabled  
22 member of ASRS who elects family coverage and who otherwise qualifies for  
23 payment pursuant to subsection A of this section. If a member of ASRS and  
24 the member's spouse are both either retired or disabled under ASRS and apply  
25 for family coverage, the member who elects family coverage is entitled to  
26 receive the payments under this section as if they were both applying under a  
27 single coverage premium unless the payment under this section for family  
28 coverage is greater. Payment under this subsection is in the following  
29 amounts:

30           1. Up to two hundred sixty dollars per month if the member of ASRS and  
31 one or more dependents are not eligible for medicare.

32           2. Up to one hundred seventy dollars per month if the member of ASRS  
33 and one or more dependents are eligible for medicare.

34           3. Up to two hundred fifteen dollars per month if either:

35           (a) The member of ASRS is not eligible for medicare and one or more  
36 dependents are eligible for medicare.

37           (b) The member of ASRS is eligible for medicare and one or more  
38 dependents are not eligible for medicare.

39           C. In addition each retired, contingent annuitant or disabled member  
40 of ASRS with less than ten years of credited service and a dependent of such  
41 a retired, contingent annuitant or disabled member who elects to participate  
42 in the coverage provided by ASRS or section 38-651.01 or who elects to  
43 participate in a health and accident insurance program provided or  
44 administered by an employer or paid for, in whole or in part, by an employer  
45 to an insurer is entitled to receive a proportion of the full benefit

1 prescribed by subsection A, ~~OR B, E, F, O or P~~ of this section according to  
2 the following schedule:

- 3 1. 9.0 to 9.9 years of credited service, ninety per cent.
- 4 2. 8.0 to 8.9 years of credited service, eighty per cent.
- 5 3. 7.0 to 7.9 years of credited service, seventy per cent.
- 6 4. 6.0 to 6.9 years of credited service, sixty per cent.
- 7 5. 5.0 to 5.9 years of credited service, fifty per cent.
- 8 6. Those with less than five years of credited service do not qualify  
9 for the benefit.

10 D. The board shall not pay more than the amount prescribed in this  
11 section for a member of ASRS.

12 ~~E. In addition to the payments provided by subsection A of this~~  
13 ~~section, through June 30, 2005, the board shall pay an insurance premium~~  
14 ~~benefit for medical coverage, not including limited benefit coverage as~~  
15 ~~defined in section 20-1137, for each retired, contingent annuitant or~~  
16 ~~disabled member of ASRS who is eligible for a premium benefit payment~~  
17 ~~pursuant to subsection A of this section and who lives in a nonservice area~~  
18 ~~as follows:~~

19 1. ~~Up to three hundred dollars per month for a member of ASRS who is~~  
20 ~~not eligible for medicare if the retired or disabled member has ten or more~~  
21 ~~years of credited service. To qualify for this additional benefit, a retired~~  
22 ~~or disabled member of ASRS shall pay out of pocket medical insurance premiums~~  
23 ~~of at least one hundred twenty five dollars per month.~~

24 2. ~~Up to one hundred seventy dollars per month for a member of ASRS~~  
25 ~~who is eligible for medicare if the retired or disabled member has ten or~~  
26 ~~more years of credited service. To qualify for this additional benefit, a~~  
27 ~~retired or disabled member of ASRS shall pay out of pocket medical insurance~~  
28 ~~premiums of at least one hundred dollars per month.~~

29 ~~F. In addition to the payments provided by subsection B of this~~  
30 ~~section, through June 30, 2005, the board shall pay from ASRS assets part of~~  
31 ~~the family coverage premium for medical coverage, not including limited~~  
32 ~~benefit coverage as defined in section 20-1137, for a retired, contingent~~  
33 ~~annuitant or disabled member of ASRS who is eligible for a premium benefit~~  
34 ~~payment pursuant to subsection B of this section, who is enrolled in a family~~  
35 ~~medical plan and who lives in a nonservice area as follows:~~

36 1. ~~Up to six hundred dollars per month if the member of ASRS and one~~  
37 ~~or more dependents are not eligible for medicare and the retired or disabled~~  
38 ~~member of ASRS has ten or more years of credited service. To qualify for~~  
39 ~~this additional benefit, a retired or disabled member shall pay out of pocket~~  
40 ~~medical insurance premiums of at least four hundred twenty five dollars per~~  
41 ~~month.~~

42 2. ~~Up to three hundred fifty dollars per month if the member of ASRS~~  
43 ~~and one or more dependents are eligible for medicare and the retired or~~  
44 ~~disabled member of ASRS has ten or more years of credited service. To~~  
45 ~~qualify for this additional benefit, a retired or disabled member shall pay~~

1 ~~out of pocket medical insurance premiums of at least two hundred dollars per~~  
2 ~~month.~~

3 ~~3. If the retired or disabled member of ASRS has ten or more years of~~  
4 ~~credited service, up to four hundred seventy dollars per month if either:~~

5 ~~(a) The member of ASRS is not eligible for medicare and one or more~~  
6 ~~dependents are eligible for medicare.~~

7 ~~(b) The member of ASRS is eligible for medicare and one or more~~  
8 ~~dependents are not eligible for medicare.~~

9 ~~To qualify for this additional benefit, a retired or disabled member shall~~  
10 ~~pay out of pocket medical insurance premiums of at least four hundred dollars~~  
11 ~~per month.~~

12 ~~G. A retired, contingent annuitant or disabled member of ASRS who is~~  
13 ~~enrolled in a managed care program in a nonservice area is not eligible for~~  
14 ~~the payment prescribed in subsection E, F, O or P of this section.~~

15 ~~H. E. A retired, contingent annuitant or disabled member of ASRS may~~  
16 ~~elect to purchase individual health care coverage and receive a payment~~  
17 ~~pursuant to this section through the retired or disabled member's employer if~~  
18 ~~that employer assumes the administrative functions associated with the~~  
19 ~~payment, including verification that the payment is used to pay for health~~  
20 ~~insurance coverage if the payment is made to the retired or disabled member.~~

21 ~~I. F. The board shall establish a separate account that consists of~~  
22 ~~the benefits provided by this section. The board shall not use or divert any~~  
23 ~~part of the corpus or income of the account for any purpose other than the~~  
24 ~~provision of benefits under this section unless the liabilities of ASRS to~~  
25 ~~provide the benefits are satisfied. If the liabilities of ASRS to provide~~  
26 ~~the benefits described in this section are satisfied, the board shall return~~  
27 ~~any amount remaining in the account to the employer.~~

28 ~~J. G. Payment of the benefits provided by this section is subject to~~  
29 ~~the following conditions:~~

30 ~~1. The payment of the benefits is subordinate to the payment of~~  
31 ~~retirement benefits payable by ASRS.~~

32 ~~2. The total of contributions for the benefits and actual~~  
33 ~~contributions for life insurance protection, if any, shall not exceed~~  
34 ~~twenty-five per cent of the total actual employer and employee contributions~~  
35 ~~to ASRS, less contributions to fund past service credits, after the day the~~  
36 ~~account is established.~~

37 ~~3. The board shall deposit the benefits provided by this section in~~  
38 ~~the account.~~

39 ~~4. The contributions by the employer to the account shall be~~  
40 ~~reasonable and ascertainable.~~

41 ~~K. H. A member who elects to receive a retirement benefit pursuant to~~  
42 ~~section 38-760, subsection B, paragraph 1 may elect at the time of retirement~~  
43 ~~an optional form of health and accident insurance premium benefit payment~~  
44 ~~pursuant to this subsection as follows:~~

1           1. The optional premium benefit payment shall be an amount prescribed  
2 by subsection A, B, ~~OR C, E, F, O or P~~ of this section that is actuarially  
3 reduced to the retiring member for life. The amount of the optional premium  
4 benefit payment shall be the actuarial equivalent of the premium benefit  
5 payment to which the retired member would otherwise be entitled. The  
6 election in a manner prescribed by the board shall name the contingent  
7 annuitant and may be revoked at any time before the retiring member's  
8 effective date of retirement. At any time after benefits have commenced, the  
9 member may name a different contingent annuitant or rescind the election by  
10 written notice to the board as follows:

11           (a) If the retired member names a different contingent annuitant, the  
12 optional premium benefit payment shall be adjusted to the actuarial  
13 equivalent of the original premium benefit payment based on the age of the  
14 new contingent annuitant. The adjustment shall include all postretirement  
15 increases or decreases in amounts prescribed by subsection A, B, ~~OR C, E, F,~~  
16 ~~O or P~~ of this section that are authorized by law after the retired member's  
17 date of retirement. Payment of this adjusted premium benefit payment shall  
18 continue under the provisions of the optional premium benefit payment  
19 previously elected by the retired member. A retired member cannot name a  
20 different contingent annuitant if the retired member has at any time  
21 rescinded the optional form of health and accident insurance premium benefit  
22 payment.

23           (b) If the retired member rescinds the election, the retired member  
24 shall thereafter receive the premium benefit payment that the retired member  
25 would otherwise be entitled to receive if the retired member had not elected  
26 the optional premium benefit payment, including all postretirement increases  
27 or decreases in amounts prescribed by subsection A, B, ~~OR C, E, F, O or P~~ of  
28 this section that are authorized by law after the member's date of  
29 retirement. The increased benefit payment shall continue during the  
30 remainder of the retired member's lifetime. The decision to rescind shall be  
31 irrevocable.

32           2. If, at the time of the retired member's death:

33           (a) The retired member was receiving a reduced premium benefit payment  
34 based on an amount prescribed in subsection B, ~~OR C, F or P~~ of this section  
35 and the contingent annuitant is eligible for family health and accident  
36 insurance coverage, the contingent annuitant is entitled to receive a premium  
37 benefit payment based on an amount prescribed in subsection B, ~~OR C, F or P~~  
38 of this section times the reduction factor applied to the retired member's  
39 premium benefit payment times the joint and survivor option reduction factor  
40 elected by the retired member at the time of retirement pursuant to section  
41 38-760, subsection B, paragraph 1.

42           (b) The retired member was receiving a reduced premium benefit payment  
43 based on an amount prescribed in subsection A, ~~OR C, E or O~~ of this section  
44 and the contingent annuitant is eligible for single health and accident  
45 insurance coverage, the contingent annuitant is entitled to receive a premium

1 benefit payment based on an amount prescribed in subsection A, ~~OR C, E or F~~  
2 of this section times the reduction factor applied to the retired member's  
3 premium benefit payment times the joint and survivor option reduction factor  
4 elected by the retired member at the time of retirement pursuant to section  
5 38-760, subsection B, paragraph 1.

6 (c) The retired member was receiving a reduced premium benefit payment  
7 based on an amount prescribed in subsection B, ~~OR C, F or P~~ of this section  
8 and the contingent annuitant is not eligible for family health and accident  
9 insurance coverage, the contingent annuitant is entitled to receive a premium  
10 benefit payment based on an amount prescribed in subsection A, ~~OR C, E or F~~  
11 of this section times the reduction factor applied to the retired member's  
12 premium benefit payment times the joint and survivor option reduction factor  
13 elected by the retired member at the time of retirement pursuant to section  
14 38-760, subsection B, paragraph 1.

15 ~~4.~~ I. A member who elects to receive a retirement benefit pursuant to  
16 section 38-760, subsection B, paragraph 2 may elect at the time of retirement  
17 an optional form of health and accident insurance premium benefit payment  
18 pursuant to this subsection as follows:

19 1. The optional premium benefit payment shall be an amount prescribed  
20 by subsection A, B, ~~OR C, E, F, O or P~~ of this section that is actuarially  
21 reduced with payments for five, ten or fifteen years that are not dependent  
22 on the continued lifetime of the retired member but whose payments continue  
23 for the retired member's lifetime beyond the five, ten or fifteen year  
24 period. The election in a manner prescribed by the board shall name the  
25 contingent annuitant and may be revoked at any time before the retiring  
26 member's effective date of retirement. At any time after benefits have  
27 commenced, the member may name a different contingent annuitant or rescind  
28 the election by written notice to the board. If the retired member rescinds  
29 the election, the retired member shall thereafter receive the premium benefit  
30 payment that the retired member would otherwise be entitled to receive if the  
31 retired member had not elected the optional premium benefit payment,  
32 including all postretirement increases or decreases in amounts prescribed by  
33 subsection A, B, ~~OR C, E, F, O or P~~ of this section that are authorized by  
34 law after the member's date of retirement. The increased benefit payment  
35 shall continue during the remainder of the retired member's lifetime. The  
36 decision to rescind shall be irrevocable.

37 2. If, at the time of the retired member's death:

38 (a) The retired member was receiving a reduced premium benefit payment  
39 based on an amount prescribed in subsection B, ~~OR C, F or P~~ of this section  
40 and the contingent annuitant is eligible for family health and accident  
41 insurance coverage, the contingent annuitant is entitled to receive a premium  
42 benefit payment based on an amount prescribed in subsection B, ~~OR C, F or P~~  
43 of this section times the period certain and life option reduction factor  
44 elected by the retired member at the time of retirement pursuant to section  
45 38-760, subsection B, paragraph 2.



(b) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection A, ~~OR C, E or F~~ of this section and the contingent annuitant is eligible for single health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A, ~~OR C, E or F~~ of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

(c) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B, ~~OR C, F or P~~ of this section and the contingent annuitant is not eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A, ~~OR C, E or F~~ of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

~~M.~~ J. If, at the time of retirement, a retiring member does not elect to receive a reduced premium benefit payment pursuant to subsection K ~~or L~~ H OR I of this section, the retired member's contingent annuitant is not eligible at any time for the optional premium benefit payment.

~~N.~~ K. A contingent annuitant is not eligible for any premium benefit payment if the contingent annuitant was not enrolled in an eligible health and accident insurance plan at the time of the retired member's death or if the contingent annuitant is not the dependent beneficiary or insured surviving dependent as provided in section 38-782.

~~O.~~ In addition to the payments provided by subsection A of this section, beginning July 1, 2005 through June 30, 2009, the board shall pay an insurance premium benefit for medical coverage, not including limited benefit coverage as defined in section 20-1137, for each medicare eligible retired, contingent annuitant or disabled member of ASRS who is eligible for a premium benefit payment pursuant to subsection A of this section and who lives in a nonservice area of up to one hundred seventy dollars per month for a member of ASRS who is eligible for medicare if the retired or disabled member has ten or more years of credited service. To qualify for this additional benefit, a retired or disabled member of ASRS shall pay out of pocket medical insurance premiums of at least one hundred dollars per month.

~~P.~~ In addition to the payments provided by subsection B of this section, beginning July 1, 2005 through June 30, 2009, the board shall pay from ASRS assets part of the family coverage premium for medical coverage, not including limited benefit coverage as defined in section 20-1137, for a medicare eligible retired, contingent annuitant or disabled member of ASRS who is eligible for a premium benefit payment pursuant to subsection B of this section, who is enrolled in a family medical plan and who lives in a nonservice area as follows:

1 ~~1. Up to three hundred fifty dollars per month if the member of ASRS~~  
2 ~~and one or more dependents are eligible for medicare and the retired or~~  
3 ~~disabled member of ASRS has ten or more years of credited service. To~~  
4 ~~qualify for this additional benefit, a retired or disabled member shall pay~~  
5 ~~out of pocket medical insurance premiums of at least two hundred dollars per~~  
6 ~~month.~~

7 ~~2. If the retired or disabled member of ASRS has ten or more years of~~  
8 ~~credited service, up to four hundred seventy dollars per month if the member~~  
9 ~~of ASRS is eligible for medicare and one or more dependents are not eligible~~  
10 ~~for medicare. To qualify for this additional benefit, a retired or disabled~~  
11 ~~member shall pay out of pocket medical insurance premiums of at least four~~  
12 ~~hundred dollars per month.~~

13 ~~Q. L. For the purposes of this section:~~

14 ~~1. "Account" means the separate account established pursuant to~~  
15 ~~subsection I- F of this section.~~

16 ~~2. "Credited service" includes prior service.~~

17 ~~3. "Nonservice area" means an area in this state in which ASRS~~  
18 ~~pursuant to section 38-782, the department of administration pursuant to~~  
19 ~~section 38-651.01 or any employer does not provide or administer a health~~  
20 ~~care services organization program, excluding any preferred provider~~  
21 ~~organization program or individual health indemnity policy, for which the~~  
22 ~~retired, contingent annuitant or disabled member of ASRS is eligible.~~

23 ~~4. 3. "Prior service" means service for this state or a political~~  
24 ~~subdivision of this state before membership in the defined contribution~~  
25 ~~program administered by ASRS.~~

26 ~~Sec. 16. Section 38-797, Arizona Revised Statutes, is amended to read:~~

27 ~~38-797. Definitions~~

28 ~~In this article, unless the context otherwise requires:~~

29 ~~1. "ASRS" means the Arizona state retirement system established by~~  
30 ~~article 2 of this chapter.~~

31 ~~2. "Assets" means the accumulated resources of the LTD program.~~

32 ~~3. "Board" means the ASRS board established pursuant to section~~  
33 ~~38-713.~~

34 ~~4. "Compensation" means the gross amount paid to a member by an~~  
35 ~~employer as salary or wages, including amounts that are subject to deferred~~  
36 ~~compensation or tax shelter agreements, for services rendered to or for an~~  
37 ~~employer, or that would have been paid to the member except for the member's~~  
38 ~~election or a legal requirement that all or part of the gross amount be used~~  
39 ~~for other purposes. Compensation does not include:~~

40 ~~(a) Lump sum payments on termination of employment for accumulated~~  
41 ~~vacation or annual leave, sick leave, compensatory time or any other form of~~  
42 ~~termination pay whether the payments are made in one payment or by~~  
43 ~~installments over a period of time.~~

1 ~~(b) Damages, costs, attorney fees, interest or other penalties paid~~  
2 ~~pursuant to a court order or a compromise settlement or agreement to satisfy~~  
3 ~~a grievance or claim even though the amount of the payment is based in whole~~  
4 ~~or in part on previous salary or wage levels, except that, if the court order~~  
5 ~~or compromise settlement or agreement directs salary or wages to be paid for~~  
6 ~~a specific period of time, the payment is compensation for that specific~~  
7 ~~period of time.~~

8 ~~(c) Payment, at the member's option, in lieu of fringe benefits that~~  
9 ~~are normally paid for or provided by the employer.~~

10 ~~(d) Merit awards pursuant to section 38-613 and performance bonuses~~  
11 ~~paid to assistant attorneys general pursuant to section 41-192 HAS THE SAME~~  
12 ~~MEANING PRESCRIBED IN SECTION 38-711.~~

13 5. "Depository" means a bank in which the monies of the LTD program  
14 are deposited and collateralized as provided by law.

15 6. "Employer" means:

16 ~~(a) This state.~~

17 ~~(b) Participating political subdivisions HAS THE SAME MEANING~~  
18 ~~PRESCRIBED IN SECTION 38-711.~~

19 7. "Employer contributions" means all amounts paid into the LTD  
20 program by an employer.

21 8. "Fiscal year" ~~means the period from July 1 of any year to June 30~~  
22 ~~of the following year HAS THE SAME MEANING PRESCRIBED IN SECTION 38-711.~~

23 9. "LTD program" means the long-term disability program established by  
24 this article.

25 10. "Member" has the same meaning prescribed in section 38-711.

26 11. "Monthly compensation" means one-twelfth of a member's annual  
27 compensation paid and payable in the fiscal year during which a member  
28 becomes disabled.

29 12. "Normal retirement date" ~~means the earliest of the following:~~

30 ~~(a) A member's sixty-fifth birthday.~~

31 ~~(b) A member's sixty-second birthday and completion of at least ten~~  
32 ~~years of credited service.~~

33 ~~(c) The first day that the sum of a member's age and years of total~~  
34 ~~credited service equals eighty HAS THE SAME MEANING PRESCRIBED IN SECTION~~  
35 ~~38-711.~~

36 13. "Political subdivision" ~~means any political subdivision of this~~  
37 ~~state HAS THE SAME MEANING PRESCRIBED IN SECTION 38-711.~~

38 14. "State" ~~means this state, including any department, office, board,~~  
39 ~~commission, agency, institution or other instrumentality of this state HAS~~  
40 ~~THE SAME MEANING PRESCRIBED IN SECTION 38-711.~~

41 Sec. 17. Repeal

42 Section 38-797.06, Arizona Revised Statutes, is repealed.

1       Sec. 18. Title 38, chapter 5, article 2.1, Arizona Revised Statutes,  
2 is amended by adding a new section 38-797.06, to read:

3       38-797.06. Contribution rate; annual report

4       A. THE BOARD SHALL SELECT AN ACTUARY TO DETERMINE REQUIRED EMPLOYER  
5 CONTRIBUTIONS ON AN ANNUAL BASIS. THE ACTUARY SHALL BE A FELLOW OF THE  
6 SOCIETY OF ACTUARIES.

7       B. EMPLOYER CONTRIBUTIONS SHALL BE A PERCENTAGE OF COMPENSATION OF ALL  
8 EMPLOYEES OF THE EMPLOYERS, AS THE ASRS ACTUARY DETERMINES PURSUANT TO THIS  
9 SECTION. THE ACTUARY SHALL MAKE THIS DETERMINATION IN AN ANNUAL VALUATION  
10 PERFORMED AS OF JUNE 30. THE VALUATION AS OF JUNE 30 OF A CALENDAR YEAR  
11 SHALL DETERMINE THE PERCENTAGE TO BE APPLIED TO COMPENSATION FOR THE FISCAL  
12 YEAR BEGINNING JULY 1 OF THE FOLLOWING CALENDAR YEAR. THE ACTUARY SHALL  
13 DETERMINE THE TOTAL EMPLOYER CONTRIBUTION USING AN ACTUARIAL COST METHOD  
14 CONSISTENT WITH GENERALLY ACCEPTED ACTUARIAL STANDARDS. THE TOTAL EMPLOYER  
15 CONTRIBUTIONS SHALL BE EQUAL TO THE EMPLOYER NORMAL COST PLUS THE AMOUNT  
16 REQUIRED TO AMORTIZE THE PAST SERVICE FUNDING REQUIREMENT OVER A PERIOD  
17 CONSISTENT WITH GENERALLY ACCEPTED ACTUARIAL STANDARDS.

18       C. ALL CONTRIBUTIONS MADE BY THE EMPLOYER AND ALLOCATED TO THE LTD  
19 TRUST FUND ESTABLISHED BY SECTION 38-797.02 ARE IRREVOCABLE AND SHALL BE USED  
20 AS BENEFITS UNDER THIS ARTICLE OR TO PAY EXPENSES OF THE LTD PROGRAM.

21       D. ASRS SHALL PROVIDE A PRELIMINARY REPORT ON OR BEFORE NOVEMBER 30 OF  
22 THE VALUATION YEAR AND A FINAL REPORT ON OR BEFORE JANUARY 15 OF THE  
23 FOLLOWING YEAR TO THE GOVERNOR, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES  
24 AND THE PRESIDENT OF THE SENATE ON THE CONTRIBUTION RATE FOR THE ENSUING  
25 FISCAL YEAR.

26       Sec. 19. Section 38-797.07, Arizona Revised Statutes, is amended to  
27 read:

28       38-797.07. LTD program benefits; limitations; definitions

29       A. The LTD program is subject to the following limitations:

30       1. Except as provided in paragraph 7 of this subsection, monthly LTD  
31 PROGRAM benefits shall not exceed two-thirds of a member's monthly  
32 compensation at the time disability commences, reduced by:

33       (a) For a member whose disability commences before July 1, 2008,  
34 sixty-four per cent of social security disability benefits that the member ~~or~~  
35 AND the member's dependents are eligible to receive.

36       (b) For a member whose disability commences on or after July 1, 2008,  
37 eighty-five per cent of social security disability benefits that the member  
38 ~~or~~ AND the member's dependents are eligible to receive, but not including:

39       (i) The amount of attorney fees approved pursuant to social security  
40 administration rules and reasonable documented costs paid to an attorney to  
41 secure that disability benefit.

42       (ii) Any cost-of-living adjustments that are granted after the member  
43 commences benefits under this section.

1 (c) For a member whose disability commences before July 1, 2008,  
2 eighty-three per cent of social security retirement benefits that the member  
3 is eligible to receive.

4 (d) For a member whose disability commences on or after July 1, 2008,  
5 eighty-five per cent of social security retirement benefits that the member  
6 is eligible to receive, but not including any cost-of-living adjustments that  
7 are granted after the member commences benefits under this section.

8 (e) All of any workers' compensation benefits.

9 (f) All of any payments for a veteran's disability if both of the  
10 following apply:

11 (i) The veteran's disability payment is for the same condition or a  
12 condition related to the condition currently causing the member's total  
13 disability.

14 (ii) The veteran's disability is due to, or a result of, service in  
15 the armed forces of the United States.

16 (g) All of any other benefits by reason of employment that are  
17 financed partly or wholly by an employer, including payments for sick leave.  
18 This subdivision does not include any retirement benefit that is received by  
19 the member pursuant to a state retirement system or plan other than ASRS.

20 (h) Fifty per cent of any salary, wages, commissions or other  
21 employment related pay that the member receives or is entitled to receive  
22 from any gainful employment in which the member actually engages.

23 2. Monthly LTD PROGRAM benefits are not payable until a member has  
24 been totally disabled for a period of six consecutive months.

25 3. Monthly LTD PROGRAM benefits are not payable to a member who is  
26 receiving retirement benefits from ASRS.

27 4. Monthly LTD PROGRAM benefits are not payable to a member whose  
28 disability is due to, or a result of, any of the following:

29 (a) An intentionally self-inflicted injury.

30 (b) War, whether declared or not.

31 (c) An injury incurred while engaged in a felonious criminal act or  
32 enterprise.

33 (d) For a member whose most recent membership in the LTD program  
34 commences before July 1, 2008, an injury or sickness for which the member  
35 received medical treatment within three months before the date of the  
36 member's coverage under the LTD program. This subdivision does not apply to  
37 a member who either:

38 (i) Has been an active member of an employer for twelve continuous  
39 months.

40 (ii) Is employed by an employer before July 1, 1988.

41 (e) For a member whose most recent membership in the LTD program  
42 commences on or after July 1, 2008, an injury or sickness for which the  
43 member received medical treatment within six months before the date of the  
44 member's coverage under the LTD program. This subdivision does not apply to

1 a member who has been an active member of an employer for twelve continuous  
2 months.

3 5. Monthly LTD PROGRAM benefits cease to be payable to a member at the  
4 earliest of the following:

5 (a) The date the member ceases to be totally disabled.

6 (b) The date the member:

7 (i) Ceases to be under the direct care of a doctor.

8 (ii) Refuses to undergo any medical examination or refuses to  
9 participate in any work rehabilitation program for which the member is  
10 reasonably qualified by education, training or experience and that is  
11 requested by the insurance company or claims administrator that is selected  
12 by the board to administer the LTD program.

13 (c) The date the member withdraws employee contributions with interest  
14 and ceases to be a member.

15 (d) The later of the following:

16 (i) The member's normal retirement date.

17 (ii) The month following sixty months of payments if disability occurs  
18 before sixty-five years of age.

19 (iii) The month following attainment of seventy years of age if  
20 disability occurs at sixty-five years of age or after but before sixty-nine  
21 years of age.

22 (iv) The month following twelve months of payments if disability  
23 occurs at or after sixty-nine years of age.

24 (e) If the member is convicted of a criminal offense and sentenced to  
25 more than six months in a jail, prison or other penal institution, the first  
26 day of the month following the first thirty continuous days of the member's  
27 confinement for the remainder of the confinement.

28 6. Monthly LTD PROGRAM benefits are payable ~~under the LTD program~~ only  
29 for disabilities that commence on or after July 1, 1988.

30 7. The minimum benefit for a member who is entitled to receive MONTHLY  
31 LTD PROGRAM benefits ~~under the LTD program~~ is fifty dollars per month.

32 8. Members are eligible to receive the LTD PROGRAM benefits and  
33 payments described in paragraph 1 of this subsection, and the reductions  
34 provided by paragraph 1 of this subsection apply even though the SOCIAL  
35 SECURITY benefits are not actually paid as follows:

36 (a) For primary and dependent social security benefits, the members  
37 are eligible for the SOCIAL SECURITY benefits until the SOCIAL SECURITY  
38 benefits are actually awarded, or if the SOCIAL SECURITY benefits are denied,  
39 until the member pursues the social security appeal process through a hearing  
40 before a social security administrative law judge or until the insurance  
41 company or claims administrator determines that the member is not eligible  
42 for social security ~~disability~~ benefits.

43 (b) For benefits and payments from any other source provided in  
44 paragraph 1 of this subsection, the members are eligible for the benefits if  
45 it is reasonable to believe that ~~the~~ THOSE benefits will be paid on proper

1 completion of the claim or would have been paid except for the failure of the  
2 member to pursue the claim in time.

3 9. A member shall be considered totally disabled if:

4 (a) During the first thirty months of a period of disability, the  
5 member is unable to perform all duties of the position held by the member  
6 when the member became totally disabled.

7 (b) For a member who has received monthly LTD PROGRAM benefits for  
8 twenty-four months within a five-year period, the member is unable to perform  
9 any work for compensation or gain for which the member is reasonably  
10 qualified by education, training or experience in an amount at least equal to  
11 the scheduled LTD PROGRAM benefits prescribed in paragraph 1 of this  
12 subsection.

13 B. A member who receives monthly LTD PROGRAM benefits ~~from the LTD~~  
14 ~~program~~ is entitled to receive service credit pursuant to article 2 of this  
15 chapter from the time disability commences until LTD PROGRAM benefits cease  
16 to be payable, except that for a member who receives monthly LTD PROGRAM  
17 benefits ~~from the LTD program~~ on or after June 30, 1999 the number of years  
18 of service credited to the member's retirement account during the period the  
19 member receives LTD PROGRAM benefit payments shall not cause the member's  
20 total credited service for retirement benefits to exceed the greater of  
21 thirty years or the total years of service credited to the member's  
22 retirement account on the commencement of disability.

23 C. This section does not prohibit a member whose disability has been  
24 established to the satisfaction of the board from relying on treatment by  
25 prayer through spiritual means in accordance with the tenets and practice of  
26 a recognized church, religious denomination or Native American traditional  
27 medicine by a duly accredited practitioner of the church, denomination or  
28 Native American traditional medicine without suffering reduction or  
29 suspension of the member's monthly LTD PROGRAM benefits.

30 D. For the purposes of this section:

31 1. "Received medical treatment" means that the member consulted with  
32 or received the advice of a licensed medical or dental practitioner,  
33 including advice given during a routine examination, and it includes  
34 situations in which the member received medical or dental care, treatment or  
35 services, including the taking of drugs, medication, insulin or similar  
36 substances.

37 2. "Social security" and "social security disability" includes the  
38 railroad retirement act of 1974 (P.L. 93-445; 88 Stat. 1305; 45 United States  
39 Code sections 231 through 231u).

40 Sec. 20. Repeal

41 Laws 2007, chapter 244, section 4 is repealed.

42 Sec. 21. Dual employment; prior and current second employment;  
43 exemption from compensation definition

44 A. Notwithstanding section 38-711, paragraph 7, Arizona Revised  
45 Statutes, as amended by this act, "compensation" includes amounts paid as

1 salary or wages to a member by a second employer and the second employer  
2 shall remit contributions required by title 38, chapter 5, articles 2 and  
3 2.1, Arizona Revised Statutes, regardless of whether the employee meets the  
4 requirements prescribed in section 38-711, paragraph 23, subdivision (b),  
5 Arizona Revised Statutes, as amended by this act, if both of the following  
6 apply:

7 1. The employee performed services for the same second employer  
8 between January 1, 2005 and December 31, 2009 and was not engaged to work at  
9 least twenty weeks in each fiscal year and at least twenty hours each week by  
10 that second employer.

11 2. The employee resumes or continues employment with the same second  
12 employer before January 1, 2012 and is not engaged to work at least twenty  
13 weeks in each fiscal year and at least twenty hours each week by that second  
14 employer.

15 B. If the employee is contributing pursuant to subsection A of this  
16 section and the employee leaves employment for more than thirty consecutive  
17 days during the employee's service year, as defined in section 38-711,  
18 paragraph 31, Arizona Revised Statutes, as amended by this act, this section  
19 no longer applies and the employee is subject to section 38-711, paragraph 7,  
20 Arizona Revised Statutes, as amended by this act.

21 Sec. 22. Effective date

22 Section 38-711, Arizona Revised Statutes, as amended by this act, is  
23 effective from and after December 31, 2009.

24 Sec. 23. Retroactivity

25 A. Section 38-745, Arizona Revised Statutes, as amended by Laws 2007,  
26 chapter 244, section 1 and this act, applies retroactively to from and after  
27 June 30, 2009.

28 B. Sections 8 and 20 of this act are effective retroactively to from  
29 and after June 30, 2009.

APPROVED BY THE GOVERNOR JULY 10, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 10, 2009.